

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VHT, INC.,

Plaintiff,

v.

ZILLOW GROUP, INC., et al.,

Defendants.

CASE NO. C15-1096JLR

ORDER

**I. INTRODUCTION**

Before the court is Plaintiff VHT, Inc., and Defendants Zillow Group, Inc., and Zillow, Inc.'s (collectively, "Zillow") joint submission regarding a discovery dispute. (Joint Subm. (Dkt. # 110)); *see also* Local Rules W.D. Wash. LCR 37. Zillow moves to compel VHT to "identify and produce all agreements it has with third parties that transfer or provide an interest in the recovery sought in this action." (*Id.* at 1.) VHT opposes Zillow's motion. (*Id.*) Having reviewed the parties' joint submission, the applicable law,

1 and the relevant portions of the record,<sup>1</sup> the court DENIES Zillow's motion to compel  
2 without prejudice.

## 3 II. BACKGROUND & ANALYSIS

4 VHT sued Zillow for direct, contributory, and vicarious copyright infringement of  
5 images used by Zillow. (*See generally* Am. Compl. (Dkt. # 105).) Zillow  
6 counterclaimed and alleges that VHT violated two statutes and committed several torts.  
7 (*See Answer* (Dkt. # 112) at 25-34.)

8 In the disputed discovery request, Zillow requested that VHT "[i]dentify any  
9 person other than VHT that may have an interest in any recovery [sought] in this action,  
10 and, . . . identify any agreement under which [VHT] may be required to share or assign  
11 any of the recovery in this action."<sup>2</sup> (Joint Subm. at 2 (alterations in original) (citing  
12 Interrogatory No. 19).)<sup>3</sup> Zillow principally argues that this information is relevant to  
13 "whether VHT has standing to pursue its copyright infringement claims." (*Id.*; *see also*  
14 *id.* at 4-6.) In addition, Zillow argues that "the funders' interest may render them  
15 indispensable parties, . . . the funders may be co-conspirators and potential defendants,  
16 and . . . [the funders] may be witnesses to relevant transactions." (*Id.* at 6.)

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19 <sup>1</sup> Neither party has requested oral argument, and the court concludes oral argument is  
unnecessary to the disposition of this motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

20 <sup>2</sup> In meet and confers, Zillow has "explicitly excluded from its request the fee agreement  
that VHT has with its law firm." (Joint Subm. at 2 n.1.)

21 <sup>3</sup> The parties submitted no factual evidence with their joint submission, but because there  
22 is no factual dispute over the materials at issue, the court treats as true the representations in the  
parties' briefing.

1 Nothing more than speculation supports Zillow's arguments that VHT may lack  
2 standing or that VHT's litigation funder, if any exists, may be a necessary party,  
3 co-conspirator, or witness. (*See generally* Joint Subm.) The court allowed Zillow to file  
4 amended counterclaims based on the "'extreme liberality' with which the court must  
5 grant leave to amend under Federal Rule of Civil Procedure 15." (8/17/16 Order (Dkt.  
6 # 96) at 2 (citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1046, 1051 (9th Cir.  
7 2003)).) However, as VHT argues, there are "flaws in Zillow's claims." (*Id.*)

8 Without some objective evidence that any of Zillow's theories of relevance apply  
9 in this case, the court will not order VHT to respond to Interrogatory 19 and produce  
10 responsive documents. Rule 26 provides that "[p]arties may obtain discovery regarding  
11 any nonprivileged matter that is relevant to any party's claim or defense and proportional  
12 to the needs of the case."<sup>4</sup> Fed. R. Civ. P. 26(b)(1). Of the enumerated considerations  
13 that bear on proportionality, "the importance of the discovery in resolving the issues" and

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15 <sup>4</sup> Zillow repeatedly misstates the current law regarding the scope of discovery. (*See* Joint  
16 Subm. at 4 (omitting the proportionality requirement from its articulation of the scope of  
17 discovery, stating that "[t]he bar to establish relevance is low and only requires that the requested  
18 information appear to be reasonably calculated to lead to the discovery of admissible evidence,"  
19 and exclusively citing cases decided before the December 2015 amendments to the Civil Rules  
20 went into effect).) Evidence must be nonprivileged, relevant, and proportional in order to be  
21 discoverable. *See* Fed. R. Civ. P. 26(b)(1). In addition, the December 2015 amendments to the  
22 Civil Rules removed the "reasonably calculated" language from Rule 26(b)(1). *See* Fed. R. Civ.  
P. 26(b)(1) advisory committee's note to 2015 amendment ("The former provision for discovery  
of relevant but inadmissible information that appears 'reasonably calculated to lead to the  
discovery of admissible evidence' is also deleted. The phrase has been used by some,  
incorrectly, to define the scope of discovery. As the Committee Note to the 2000 amendments  
observed, use of the 'reasonably calculated' phrase to define the scope of discovery 'might  
swallow any other limitation on the scope of discovery.' . . . The 'reasonably calculated' phrase  
has continued to create problems . . . and is removed by these amendments."). Zillow's  
arguments lack merit because they are based on prior, broader iterations of the scope of  
discovery.

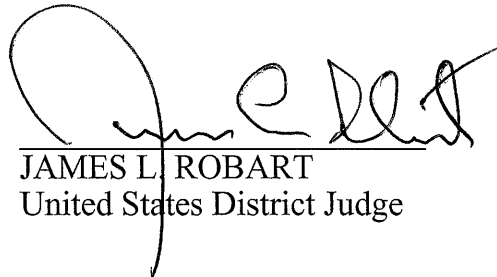
1 “whether the burden or expense of the proposed discovery outweighs its likely benefit”  
2 particularly favor VHT’s position. *Id.* Although Zillow poses several imaginable  
3 hypotheticals in which VHT’s litigation funding scenario becomes relevant, the dearth of  
4 evidence on the record supporting Zillow’s position renders that information negligibly  
5 relevant, minimally important in resolving the issues, and unduly burdensome. *See id.*  
6 Therefore, based on the record before the court, the information is disproportional to the  
7 needs of the case. *See id.*

8 In the absence of some indication that any of Zillow’s theories of relevance are  
9 more than just theories, the court denies Zillow’s motion to compel. The denial,  
10 however, is without prejudice to renewing the motion should Zillow be able to present  
11 evidence—rather than speculation—to support its theories.

### 12 III. CONCLUSION

13 Based on the foregoing analysis, the court DENIES Zillow’s motion to compel  
14 (Dkt. # 110) without prejudice.

15 Dated this 8<sup>th</sup> day of September, 2016.

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18 JAMES L. ROBART  
United States District Judge  
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